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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.1163 of 2022

1.P.Vasu Kumar,
S/o.Palanisamy,

2.S.Sakthivel,
S/o.Subramaniam

... Petitioners

Versus

State rep by
Inspector of Police,
City Crime Branch,
Coimbatore - 641 201,
(Crime No.95/2012).

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, pleaded to set aside the order dated 03.09.2021 passed in C.M.P.No.9399 of 2021 in C.C.No.2175 of 2019 on the file of the Learned Judicial Magistrate No.VII, Coimbatore and recall Mr.Shanmugam PW-5 for cross examination.

For Petitioners : M/s.K.Vasanthanayagan

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(The case has been heard through video conferencing)

This petition has been filed to set aside the order dated 03.09.2021 passed in C.M.P.No.9399 of 2021 in C.C.No.2175 of 2019 on the file of the Learned Judicial Magistrate No.VII, Coimbatore and recall Mr.Shanmugam PW-5 for cross examination.

2.The petitioners, who are the accused in C.C.No.2175 of 2019 are facing trial for the offence u/s.120(b), 415, 465, 468 and 471 IPC. The petition has been filed to recall P.W.5 for cross examination, the trial Court vide its order dated



03.09.2021 in C.M.P.No.9399 of 2021 in C.C.No.2175 of 2019 had dismissed the same, against which, the present petition has been filed.

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3. It is the contention of the learned counsel for the petitioner that there are seven witnesses examined in this case, except P.W.5 other witnesses have been examined in chief and cross examined without delay, the petitioner's counsel was not well on the particular day when P.W.5 was to be cross examined and that is the reason, P.W.5 could not be cross examined. He further submitted that the evidence of P.W.5 is the important evidence in prosecuting and justifying the defence of the petitioner and if PW5 recall is not allowed, great prejudice would be caused which cannot be undone in future. He further submitted that P.W.5 is the person who claims about petitioners in a deceitful manner taken the original documents and handed over the colour xerox later. Only P.W.5 knows the fact of handing over original, receiving but colour xerox, which is the genesis of the case. One Sakthivel / the 2nd petitioner is said to have created a sale agreement with P.W.5's father, claiming right over property, earlier to the case exchange of civil notices between the petitioner and PW5 further these facts to be brought on record by confronting with documents. The trial Court without giving any reasons, citing Vinoth Kumar case dismissed the petition.

4. Learned Additional Public Prosecutor would submit that the petitioner is an accused in this case and except P.W.5 all the other witnesses examined in chief and cross examined. P.W.5 examine in chief on 21.10.2020, six months thereafter the recall petition filed, no valid and justifiable reason given by the petitioners. The trial Court finding that the petition is filed with delay dismissed the petition.

5. At this juncture, the learned counsel for the petitioner would submit that P.W.5 was examined in chief on 21.10.2020 and only for his cross examination of PW5 alone on that day due to ill health counsel was not present. Later another counsel engaged, who had conducted trial diligently while preparation for argument, the present counsel came to know that P.W.5 was not cross examined by the then counsel. He would further submit that the cross examination of P.W.5 is necessary as he is the material witness, due to the ill health and demise of the then counsel alone the cross examination could not be done then, without considering these aspects, the learned Magistrate dismissed the recall petition filed by the petitioner. Accordingly prays for appropriate relief.



6. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the prosecution.

7. The reason given by the petitioner seems to be reasonable and acceptable. Further the citation referred by Lower Court pertains to Prevention of Corruption Act case. In view of the above, the order dated 03.09.2021 passed in C.M.P.No.9399 of 2021 in C.C.No.2175 of 2019 by the Judicial Magistrate No.VII, Coimbatore is hereby set aside. The petitioner is permitted to recall P.W.5 for cross examination. The learned counsel for the petitioner undertakes to cross examine P.W.5 without delay on the same day of witness appearance without seeking any further adjournments.

8. In view of the above, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate VII,
Coimbatore.
2. The Inspector of Police,
City Crime Branch,
Coimbatore - 641 201.
3. The Public Prosecutor
High Court of Madras.

+2ccs to M/s.K.Vasanthanayagan, Advocate, S.R.No.4082

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PMK[co]
NSK 07/02/2022